

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
MICHELE VALVO,

Plaintiff,

-against-

THE DEPARTMENT OF EDUCATION OF THE CITY OF  
NEW YORK, and THE UNITED FEDERATION OF  
TEACHERS,

Defendants.

**DECLARATION OF  
KIMBERLY E. WILKENS  
IN SUPPORT OF CITY  
DEFENDANT’S  
MOTION TO DISMISS  
THE AMENDED  
COMPLAINT**

No.: 19-cv-08341 (JPO)(SN)

----- X  
**KIMBERLY E. WILKENS** declares, under penalty of perjury and pursuant to  
28 U.S.C. § 1746, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of James E. Johnson, Corporation Counsel of the City of New York, attorney for Defendant<sup>1</sup> the Department of Education of the City of New York (“Defendant DOE”) in the above-captioned action. This declaration is respectfully submitted in support of Defendant DOE’s Motion to Dismiss the Complaint in its entirety pursuant to Federal Rules of Civil Procedure Rule 12(b)(6).

2. Annexed hereto as Exhibit “A” is a true and accurate copy of Plaintiff’s Termination Letter, dated February 9, 2018. Defendant DOE respectfully asserts Plaintiff’s Termination Letter is incorporated into Plaintiff’s Federal Amended Complaint by reference as Plaintiff brings the instant action in response to her termination and references she received a letter of termination. See Am. Compl. ¶ 27, subparagraph 6.

---

<sup>1</sup> Plaintiff alleges purported claims against co-defendant, Plaintiff’s union, United Federation of Teachers (“UFT”). As these allegations do not pertain to Defendant DOE, they are not addressed in the instant motion.

3. Annexed hereto as Exhibit “B” is a true and accurate copy of Plaintiff’s Step 1 Suspension Without Pay Grievance, dated February 9, 2018. Defendant DOE respectfully asserts Plaintiff’s Step 1 Suspension Without Pay Grievance Decision is incorporated into Plaintiff’s Federal Amended Complaint by reference because Plaintiff references said filing and the events that occurred thereafter. See Am. Compl. ¶ 20.

4. Annexed hereto as Exhibit “C” is a true and accurate copy of the relevant portions of the Collective Bargaining Agreement (“CBA”) between Plaintiff and Plaintiff’s union, co-defendant United Federation of Teachers (“UFT”). Defendant DOE respectfully asserts Plaintiff’s CBA is a matter of public and incorporated into Plaintiff’s Federal Amended Complaint by reference because Plaintiff describes the grievance procedures she initiated pursuant to her CBA. See generally Am. Compl. ¶ ¶ 20 – 26.

5. Annexed hereto as Exhibit “D” is a true and accurate copy of Plaintiff’s Step 1 Termination Grievance Decision, dated February 28, 2018. Defendant DOE respectfully asserts Plaintiff’s Step 1 Termination Grievance Decision is incorporated into Plaintiff’s Amended Complaint by reference because Plaintiff references said decision. See Am. Compl. ¶ 22.

6. Annexed hereto as Exhibit “E” is a true and accurate copy of Plaintiff’s Step 2 Suspension Without Pay Grievance Decision, dated May 17, 2018. Defendant DOE respectfully asserts Plaintiff’s Suspension Without Pay Step 2 Grievance decision is incorporated into Plaintiff’s Amended Complaint by reference because Plaintiff references said decision. See Am. Compl. ¶ ¶ 20, 25.

7. Annexed hereto as Exhibit “F” is a true and accurate copy of Plaintiff’s Step 2 Termination Grievance Decision, dated April 26, 2018. Defendant DOE respectfully asserts Plaintiff’s Termination Step 2 Decision Grievance decision is incorporated into Plaintiff’s Amended Complaint by reference because Plaintiff references said decision. See Am. Compl. ¶¶ 22, 25.

8. Annexed hereto as Exhibit “G” is a true and accurate copy of Plaintiff’s Notice of Claim, filed June 8, 2018. Defendant DOE respectfully asserts Plaintiff’s Notice of Claim is a matter of public record and incorporated into Plaintiff’s Amended Complaint by reference as Plaintiff refers to filing said Notice of Claim. See Am. Compl. ¶ 32.

I declare under penalty of perjury that the foregoing is true and correct

Dated: New York, New York  
April 29, 2020

/s/  
\_\_\_\_\_  
Kimberly E. Wilkens  
Assistant Corporation Counsel